Federal Communications Commission

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August 23, 2004

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

In the Matter of: Lifeline and Link-Up
WC Docket No. 03-109

Dear Ms. Dortch:

Enclosed please find an original and one (1) copy of Comments of the National Association of State Utility Consumer Advocates on the Futher Notice of Proposed Rulemaking. Please also note that these Comments have been filed with the Commission **electronically**.

Please indicate your receipt of this filing on the additional copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Barrett Sheridan

Barrett C. Sheridan
Assistant Consumer Advocate

Enclosure
cc: All Parties of Record

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**WC Docket No. 03-109**
Lifeline and Link-Up	)	
	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES ON THE FURTHER NOTICE OF PROPOSED RULEMAKING

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TABLE OF CONTENTS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 03-109
Lifeline and Link-Up	)	
	)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY
CONSUMER ADVOCATES
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING**

I. INTRODUCTION

The Federal Communications Commission ("FCC" or "Commission") seeks comment on whether the separate income-based criterion adopted for determining Lifeline and Link-Up eligibility[1] should be increased from the current 135% of federal poverty guidelines ("FPG") to 150% or continue at the 135% level.[2] Further, the FCC seeks comment on whether "adoption of rules governing the advertisement of the Lifeline/Link-Up program would strengthen the operation of these programs."[3]

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[1] 47 C.F.R. § 54.409(b) (eff. July 22, 2004).

[2] In the Matter of Lifeline and Link-Up, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-87 (rel. Apr. 29, 2004) ("*Lifeline Order*" or "*NPRM*") ¶¶ 56, 57.

[3] *NPRM* ¶ 58.

The National Association of State Utility Consumer Advocates ("NASUCA")[4] has previously commented that an income eligibility criterion based on 150% of FPG – as opposed to 135% - would more fully meet the goals of universal service.[5] NASUCA continues to support adoption of 150% of FPG as the appropriate measure for an income eligibility criterion, as set forth in these comments and the supporting affidavit of Roger D. Colton.[6] As explained by Mr. Colton and discussed below, the additional household income at 150% of FPG compared to 135% does not mean substantially more resources to afford basic telephone service.[7] Adoption of the 150% measure will help reach consumers who may not otherwise qualify based on program participation but are similarly in need of assistance to afford to connect or retain telephone service. Although adopting the 150% of FPG income criterion will impose some additional costs on the Universal Service Fund ("USF"), the Commission must consider the costs and benefits of current regulatory conditions. To best serve the public policy goals of universal service, the Commission should adopt a 150% of FPG income eligibility criterion.

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[4] NASUCA is a voluntary, national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[5] In the Matter of Lifeline and Link-Up, Docket No. WC 03-109, Comments of the National Association of State Utility Consumer Advocates on Joint Board Recommended Decision ("NASUCA Comments on Joint Board Recommended Decision") (Aug. 18, 2003) at 2-4, 6-11; *see also* Reply Comments of NASUCA on Joint Board Recommended Decision (Sept. 2, 2003) at 1-5, 9-15.

[6] Mr. Colton is a principal in the firm Fisher, Sheehan & Colton, Public Finance and General Economics. Mr. Colton provides technical assistance to local, state and federal agencies on rate and customer service utility issues. Mr. Colton has filed comments before this Commission and testimony before the Pennsylvania Public Utility on Lifeline and Link-Up matters.
Mr. Colton's Affidavit is attached as Appendix A. His vita are attached to the affidavit.

[7] Mr. Colton notes that the Commission's definition of "income" may require some clarification. Colton Affidavit at 22-23. NASUCA will briefly address this issue below. Clarification will help those default states which will adopt and apply the income eligibility criterion under Sections 54.400(f) and 54.409(b). 47 C.F.R. §§ 54.400(f), 54.409(b)(eff. July 22, 2004).

NASUCA supports the adoption of advertising rules as a means to strengthen the Lifeline and Link-Up program. Improvements in Lifeline and Link-Up implemented by both the FCC and states have increased Lifeline and Link-Up subscription levels. However, there are still numerous eligible, low income consumers who lack knowledge of the programs and so forgo the benefits of affordable telephone service as intended by Congress.

II. ADOPTION OF AN INCOME BASED ELIGIBILITY CRITERION OF 150 PERCENT OF FEDERAL POVERTY GUIDELINES WILL PROMOTE CONSUMER ACCESS TO AFFORDABLE TELEPHONE SERVICE

A. The Higher Income Eligibility Criterion Will Help Low Income Households Subscribe to and Retain Telephone Service.

Through the NPRM, the Commission seeks comment on whether adoption of an income-based criterion of 150% of FPG will provide equitable access to Lifeline assistance for consumers who may have low incomes similar to those participating in LIHEAP or similar programs but do not – or cannot – participate in the programs.[8] The Commission asks for information on the size and character of possible populations who would be newly eligible for Lifeline assistance under the higher income criterion.[9] NASUCA notes that the Commission relied in part on NASUCA's Comments and Reply Comments on the Joint Board Recommended Decision in concluding that some income eligibility criterion should be adopted. NASUCA offers these comments and the analysis of Mr. Colton to provide the Commission with reasons why the income criterion should be set at 150% of FPG.

Broadening the income eligibility criterion to 150% of FPG will allow these households to obtain affordable local telephone service. As Mr. Colton notes, "affordable" is a term of art which the Commission has recognized requires consideration of both an absolute

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8 *NPRM* ¶ 56.

9 *Id.*

component, which addresses the quantity of means, and a relative component, *i.e.* the question whether the cost of service may be borne without serious detriment.[10] As set forth in Mr. Colton's affidavit, the clear answer is that local telephone service is not significantly more affordable for consumers who have income above 135% of FPG up to 150% of FPG. Mr. Colton supports his findings with analysis of several scenarios of hypothetical households of different sizes and in different locales with income at 150% of FPG, calculated on a pre-tax basis. As Mr. Colton's study shows, households with these income levels may receive some public assistance, which together with income or earnings are counted as "resources." When total household resources available are applied to typical household expenses (rent including utilities, food, transportation, and other necessities, which includes telephone), each household in Mr. Colton's study is left with negative resources. In other words, for these sample households, wages plus public assistance and all other resources are insufficient to cover basic household expenses, such as rent, food, child care, and other necessities, including telephone. Thus, telephone service for households at this income level is not affordable, Mr. Colton concludes, because there are not enough resources to maintain telephone service and other basic household necessities.[11]

Based on current Census Bureau data, Mr. Colton calculates that for a significant number of these households with income of 150% of FPG, telephone service is one expenditure the household forgoes when the household resources are insufficient to cover all basic necessities. Mr. Colton estimates the number of households in the United States with income

[10] Colton Affidavit at 2, *citing* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 (1997).

[11] *Id.* at 4-5.

between 135% and 150% or FPG who live without telephone service is 742,695.[12] This number is clearly "non-trivial."[13]

Other evidence demonstrates this.[14] A recent Pennsylvania study that tracked persons who had received Temporary Assistance for Needy Families ("TANF") benefits in March 1997 but had left TANF by 2000, found that in 2000 79% and in 2003 62% of the families surveyed were below 150% of FPG.[15] Of those families surveyed, 31% fell in the range of between 100% and 150% of FPG in 2000 and 27% fell in that range in 2003. Responding to quality of life questions, in 2000 approximately 25% of the former TANF families reported being without telephone service. In 2003, the study found close to 20% of the former TANF families surveyed had been without telephone service that year.[16]

Adoption of 150% of FPG as the income criterion will help make discounted Lifeline telephone service more accessible and affordable for those consumers who, even with incomes of up to 150% of FPG, have trouble affording or retaining basic telephone service.[17]

NASUCA shares the Commission's interest in the question of whether the income criterion should be set at 150% to allow consumers with similar incomes to have similar access to Lifeline assistance, where only one consumer participates in LIHEAP.[18] As Mr. Colton states, the question applies to Food Stamps participants as well, where some Food Stamps eligibility

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[12] *Id.* at 7.

[13] *NPRM* ¶ 56.

[14] *See Lifeline Order* ¶ 11 and fn. 43.

[15] Brasher, Dr. C. Nielsen, *An Analysis of Employment Dynamics for Former TANF Recipients in Rural Pennsylvania* at 7 (Shippensburg University, The Center for Applied Research and Policy Analysis, July 2004)("*Post-TANF Study*").

[16] *Post-TANF Study* at 7, Figure 1.

[17] Colton Affidavit at 7-8.

[18] *NPRM* ¶¶ 56, 57.

may be determined based on income higher than 130% of FPG.[19] Food Stamps eligibility may take into account whether the recipient is elderly and unable to prepare meals separately to allow for a higher income criterion of 165% of FPG. Based on program eligibility, an elderly consumer in this situation could receive Food Stamps assistance and the Lifeline discount on telephone service. However, an elderly person of like income but without an impaired ability to shop for and prepare meals would not be eligible for Lifeline assistance.[20] The same situation applies to LIHEAP, where 33 states have adopted LIHEAP eligibility standards higher than 135% of FPG.[21] As Mr. Colton observes, the participation rate for LIHEAP programs is low, at 40% or lower, even for states with the higher 150% income criterion.[22] Adoption of the 150% of FPG income criterion for Lifeline eligibility will provide consumers, whether elderly or low income homeowners, with similar access to Lifeline assistance whether decided based on program or income eligibility criteria.[23]

NASUCA recommends that the Commission adopt the higher 150% of FPG income criterion to better assure that the working poor and elderly households have access to needed Lifeline assistance. Based on a study by the Urban Institute of the income and other characteristics of the working poor families, Mr. Colton finds that working poor in most states fall into that category of income above 135% of PFG and at or below 150%.[24] As Mr. Colton explains, telephone service is important to these households, where, by definition, the wage

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[19] Colton Affidavit at 7-8.

[20] *Id.* at 9.

[21] *Id.* at 10.

[22] *Id.* at 21-22.

[23] As Mr. Colton notes, consumers with much lower income who do not participate in LIHEAP may still qualify for other public assistance, which in turn would qualify the consumer for Lifeline assistance. *Id.* at 13-18.

[24] Colton Affidavit at 18-20.

earner faces long hours and is dependent on continued employment.[25] An analysis of Social Security data also shows that single, Social Security recipients "frequently have total money income that place them precisely within the 135% to 150% of FPL range."[26] Telephone service is of value to the elderly for the health and safety benefits.[27] Penetration rates are high among the elderly although telephone service is not truly affordable for elderly, low income consumers.[28]

B. The Projected Costs of the Higher Income Eligibility Criteria Do Not Outweigh the Universal Service Benefits

1. Introduction

The Commission asks for comments on the costs relative to benefits of adopting the 150% FPG measure.[29] On the cost side, the Commission notes that FCC Staff projected that an increase from 135% of FPG to 150% may add many new Lifeline subscribers, but only a minimal number would be new telephone subscribers and so improve nationwide penetration rates.[30] According to the Staff Analysis, adoption of the 150% of FPG income criterion would increase the burden on the federal Universal Service Fund in 2005 by approximately $200 million.[31] NASUCA has already urged the Commission to adopt the 150% FPG income criterion even if Staff's projections of the costs were reasonable.[32] In light of the changed circumstances

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[25] *Id.* at 20.

[26] *Id.* at 21.

[27] *Id.* at 21-22.

[28] *Id.* at 22.

[29] *NPRM* ¶ 57.

[30] *Id.*

[31] *Id.*

[32] NASUCA Comments on the Joint Board Recommended Decision at 12-14.

created by the Commission's Lifeline Order and new regulations, Staff's cost projections are no longer an appropriate guide for setting policy.

2. <u>The Costs of Enhancing An Effective Universal Service Program Are Reasonable</u>.

The Commission should consider that as of 2002, the Lifeline program without income-based eligibility represented $673 million out of the $5.35 billion disbursements of the USF, or 12.5%.[33] As explained in the NASUCA Comments on the Joint Board Recommended Decision, the impact of implementing a 135% FPG income criterion would have increased the Lifeline program's share of the federal USF to $823 million of the Staff-projected total fund of $6.739 billion, or 12.2%.[34] As calculated by NASUCA for 2004, implementation of a 150% FPG income criterion would have increased the Lifeline program to $1.001 billion out of a projected $6.917 billion fund, or 14.5%. Given that the Lifeline program is both a more direct and efficient mechanism for benefiting consumers than any of the high cost universal service funds,[35] such a modest increase in the Lifeline program's share of the USF is not reason to restrict the income eligibility criterion to 135% of FPG.

3. <u>Recent Regulatory Changes Are Not Accounted for in the Staff Analysis</u>.

The Staff Analysis helped to frame the issue and provide the Commission with guidance on the policy question of what level of income criterion to adopt. In the *NPRM*, the Commission notes that the additional costs of adopting an 150% of FPG income-based criterion, instead of one set at 135% of FPG, as projected by Staff could be approximately $200 million.[36]

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[33] *Id.* at 13, *citing* Universal Service Administrative Company, *2002 Annual Report*, Appendix B.

[34] *Id.*

[35] *Id.* at 14.

[36] *NPRM* ¶ 56.

However, NASUCA submits that various factors need to be considered that may diminish the validity of Staff's projection of the additional costs related to adoption of the 150% of FPG income-based eligibility criterion in this further rulemaking. The FCC should recognize that real life changes in the regulatory landscape have placed Lifeline and Link-Up programs on a different course than previously projected by the Staff.

In projecting the increases in telephone subscribership and corresponding costs of implementing an income-based criterion as of 2005, either at 135% or 150% of FPG, Staff made several assumptions. First, the Staff Analysis assumes that "All other Lifeline/LinkUp eligibility criteria (and the qualifications for the underlying programs) stay constant over time." As Staff explained, the analysis of costs and subscribership increases is premised on "no other changes are made to the Lifeline/LinkUP programs or to the programs that are frequently used as qualifying criteria for Lifeline between 2002 and 2005" other than the addition of a 135% or 150% of FPG income-based eligibility crierion. The Staff Analysis also assumes "[r]apid adoption and continuity," meaning "that all states rapidly adopt a 1.35 PGC (and that states with a 1.50 PGC keep it)." The model also assumes that households rapidly learn of the changes to the Lifeline program and expeditiously act on this new information.[37]

[37] *Lifeline Order*, App. K, "Lifeline Staff Analysis: Quantifying the effects of adding an income criterion to the Lifeline eligibility criteria" at K-13 ("Staff Analysis").

Lifeline eligibility criteria have not stayed constant between 2002 and 2005.[38] The Commission has properly chosen to broaden the eligibility criteria for Lifeline and Link-Up to include TANF and National School Lunch as additional program eligibility criteria, as well as adopting the interim 135% of FPG income criteria. These new requirements apply directly to the sixteen or more states and territories identified by the Commission as "default states."[39] Such program eligibility expansion will serve to expand Lifeline enrollment even without a change in income-based eligibility. Because two of the assumptions underlying the Staff analysis – no other change in Lifeline eligibility criteria and all states adopt the 135% of FPG income-based eligibility criterion -- will not be met, actual increases in the USF for low income support in 2005 cannot be reasonably compared to Staff's projection that adoption of the 135% of FPG income-based eligibility criterion will impose an additional $127 million to $140 million in costs.[40]

The Staff Analysis presumed the Commission would adopt an income-based eligibility criterion or 135% ***or*** 150% of FPG which all states would adopt and implement in 2005. Staff estimated that the additional costs of adoption of the higher 150% of FPG income

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[38] Eligibility criteria have also changed in some state lifeline programs. In January 2003, the State Corporation Commission of Kansas required all eligible telecommunications carriers in Kansas to adopt a 150% of FPG income-based eligibility criterion. In the Matter of an Investigation into the Lifeline Service Program and Methods to Ensure Awareness of the Program, Docket No. 00-GIMT-910-GIT, Order (KS SCC Jan. 21, 2003) at 11, 14. Available at www.kcc.state.us/scan/200301/20030121142301.pdf. Kansas' adoption of a 150% of FPG income-based criterion are thus already reflected in current USF costs. However, the Staff Analysis assumed Kansas had either no income-based criterion or one at or below 125% of FPG. *See* Staff Analysis Data Set, Regression Analysis data, available through www.fcc.gov/wcb/universal_service/lowincome.html , 2004 Releases "Data. Dataset used in Appendix K – Lifeline Staff Analysis; Quantifying the effects of adding an income criterion to the Lifeline eligibility criteria. (Dkt No. WC-03-109, Released 4/29/04) FCC 04-87." In contrast, in December 2003, the Delaware Public Service Commission approved Verizon Delaware's petition to revert to the basic Lifeline program offered before the Bell-GTE merger. In the Matter of the Application of Verizon Delaware Inc. to Replace the Current Universal Service Plan with its Original Lifeline Service Plan, Del. PSC Docket No. 03-022T, Order No. 6317 (Del. PSC, Dec. 9, 2003). Available at www.state.de.us/delpsc/orders/6317.html. The Delaware change in eligibility criteria likely reduced costs to the USF for 2004.

[39] *Lifeline Order* ¶10 and App.G. Idaho may also adopt the federal Lifeline and Link-Up default criteria, based on state law. *See* 56 Id. Stat. § 56-902(2)(LECs and the Idaho department of health and welfare "shall comply with all requirements expressly provided by federal order, regulation and statute for eligible subscribers to qualify for the federal 'lifeline' and 'link-up' telephone assistance program.").

[40] *Lifeline Order* ¶ 12; Staff Analysis at K-3 to K-4.

criterion would be $316 million to $348 million in 2005. Given that the Commission has chosen to address the question of what level of income-based eligibility criterion should be adopted in a two-step process, as opposed to the one step process reviewed in the Staff Analysis, the Staff estimate of the additional costs for the higher income-based criterion are no longer valid. The $200 million difference between the range for the 135% of FPG criterion ($127 million to $140 million) and 150% of FPG criterion ($316 million to $348 million) should not be used in this further rulemaking where the assumptions underpinning both measures are not met.[41] Lifeline eligibility criteria have not been constant.

Indeed, Staff's other assumption – that all states would adopt the 135% of FPG income eligibility criterion and consumers would learn of it rapidly – is not likely to occur by 2005. Even for the default states obligated to implement the FCC's new income eligibility criteria, the process of implementing these changes may stretch into 2005, since the Commission has directed states to first have the appropriate income certification and verification processes in place before implementation of the income criterion.[42] Some states which are not default states have taken steps to change their Lifeline eligibility criteria as a result of the Commission's *Lifeline Order*. Florida has already adopted an income eligibility criterion of 135% FPG for all carriers.[43] The Regulatory Commission of Alaska has opened a rulemaking docket for public comment, proposing to add the FCC's default eligibility criteria, including the 135% of FPG

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[41] *See Lifeline Order/NPRM* ¶12, 57.

[42] *Id.* ¶ 37. "[W]e encourage states and ETCs to implement certification and verification measures as quickly as possible, but no later than one year. For federal default states, level of income will not be acceptable as a means of qualifying for Lifeline/Link-Up until certification procedures are in place." *See* 47 C.F.R. § 54.409(d) (eff. July 22, 2004).

[43] Adoption of the National School Lunch Program and an Income-based Criterion at or below 135% of Federal Poverty Guidelines as Eligibility Criteria for the Lifeline and Link-Up Programs, Fl.P.S.C. Docket No. 040604-TL. *See* Florida Public Service News Release, "PSC Expands Lifeline, Link-Up Eligibility" (July 20, 2004) available at www.psc.state.fl.us/general/news/pressrelease.cfm?release=214783343 .

income criterion to the existing Alaska state funded Lifeline programs.[44] Pennsylvania has taken steps towards studying the issue.[45] But other state commissions have not announced any plans to revise their Lifeline programs. Indeed, the regulatory uncertainty concerning the appropriate income criterion level and need for advertising rules may induce states to wait for a further ruling before using state regulatory resources to re-evaluate state Lifeline programs.

Given the changes in regulation and timing for adoption of any income based criterion from those presumed by the Staff Analysis, NASUCA submits that the Staff figure of $200 million likely overstates the cost of moving to a 150% of FPG income eligibility criterion.

4. A 150% of FPG Income-Based Eligibility Criterion Should Be Adopted.

As noted above, in weighing the costs of moving to an income eligibility criterion of 150% of FPG relative to the universal service benefits of increased telephone and Lifeline subscribership, the Commission should consider the impact of recent regulatory decisions made by the Commission and the states. As explained above, adoption of even the interim income criterion of 135% is not likely to occur as universally or expeditiously as assumed for purposes of the Staff analysis.[46] The costs and impact of adopting an income based criterion are more likely to be spread over a longer period of time.

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[44] In the Matter of Proposed Regulations Implementing Lifeline and Link Up Eligibility Policies, Docket R-03-6, Order No. 3, Order Issuing Proposed Regulations for Comment. Available at http://www.state.ak.us/rca/orders/2004/r03006_3.pdf

[45] The PaPUC recently moved to have staff report on the impact of the FCC's *Lifeline Order* on Pennsylvania Lifeline programs. Petition of the Frontier Companies under Chapter 30 of the Public Utility Code, Docket No. P-00951005, Motion of Commissioner Wendell F. Holland (PaPUC Public Meeting, July 23, 2004). Motion available at www.puc.state.pa.us/PcDocs/485671.doc . A formal order which would start the 60-day period for preparation of the PaPUC staff report has not yet been entered.

[46] Staff does acknowledge that if fewer than all states adopt the income eligibility criterion, then the estimated cost impact on the USF will be less than the high end estimated. *Lifeline Order*, App. K, Staff Analysis at K-4. For the 135% of FPG income criterion the upper range of additional cost is $140 million, and for 150% of FPG $348 million. *Id.*, K-14, K-31.

Yet, based on the April 2004 Current Population Survey data, some 742,695 households with income between 135% and 150% of FPG live without a telephone in their home.[47] Other households, such as single, Social Security recipients 62 or older, may pay for telephone service to achieve the health and safety value and forgo other basic necessities. Adoption of 150% of FPG as the income criterion for the default states and as a model criteria for other states to adopt is necessary to assure that low income consumers with income in the 135% to 150% of FPG range can benefit from the Lifeline and Link-Up universal service programs.

III. CLARIFICATION OF THE COMMISSION'S DEFINITION OF "INCOME" MAY BE APPROPRIATE

As Mr. Colton notes, the Commission's broad regulatory definition of "income" for purpose of assessing Lifeline eligibility under the Lifeline default criteria appears to conflict or raise confusion when compared with federal law concerning LIHEAP and Food Stamps.[48] Section 2017(b) of the Food Stamps statute[49] and Section 8624(f)(1) of the federal LIHEAP statutes[50] are drafted to assure that payments or assistance provided under these programs are not in turn used for purposes of federal or state law "as income or resources…" The broad prescriptions of Sections 2017(b) and Section 8624(f)(1) appear to preclude what the FCC has directed states applying the default criteria to do – that is to count as "income" not only earnings before taxes, but also "public assistance benefits" which would appear to include LIHEAP or

[47] Colton Affidavit at 7.

[48] *Id.* at 23-24.

[49] 7 U.S.C. § 2017(b).

[50] 42 U.C.S. § 8624(f)(1).

Food Stamps.[51] State utility commissions experienced in administering low income assistance programs for energy utility customers may also see the need for clarification.[52]

IV. THE COMMISSION SHOULD REQUIRE ETCS TO MARKET LIFELINE PROGRAMS.

NASUCA previously submitted comments asserting that more extensive consumer education and marketing efforts are necessary to increase participation in the Lifeline/Link-Up programs.[53] Marketing is the way to reach consumers who, though eligible, may not otherwise receive the benefits of a lifeline program. Marketing requirements are consistent with the statutory directive that the Commission and states adopt policies "for the preservation *and advancement* of universal service…."[54]

NASUCA recommends that the Commission require ETCs to publicize their Lifeline/Link-Up Programs not only directly to consumers, but also to public service agencies and other organizations that reach targeted individuals. If consumers are unaware of these programs, they cannot participate in them.[55]

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[51] *Lifeline Order* ¶ 10, fn 31. *See* 47 C.F.R. § 54.400(f).

[52] The PaPUC, for example, required a gas utility to cease counting noncash benefits such as Food Stamps in evaluating customer eligibility for an energy assistance program. The PaPUC determined that the utility practice was prohibited by the federal Food Stamp Act, 7 U.S.C. § 2011, *et seq.*, and PaPUC regulations. Equitable Gas Company's Universal Service and Energy Conservation Plan, Docket No. M-00031735, Opinion and Order (PaPUC Feb. 3, 2004).

[53] In the Matter of Federal-State Joint Board on Universal Service, Docket No. 96-45, Comments of the National Association of State Utility Consumer Advocates (Dec. 31, 2001). In the Matter of Lifeline and Link-Up, Docket No. WC 03-109, NASUCA Comments on Joint Board Recommended Decision.

[54] 47 U.S.C. §254(b).

[55] A distinction can be made here between consumers who are current telephone subscribers and those who are not. If automatic enrollment is in place, outreach is not as important for current telephone subscribers. However, even with automatic enrollment, consumers who are not current telephone service subscribers need to be made aware of lifeline programs.

NASUCA believes that the current requirement to publicize the availability of Lifeline and Link-Up programs in a manner reasonably designed to reach those likely to qualify for those programs has proven to be inadequate. NASUCA recommends that the outreach provision of the federal Lifeline rules be improved by adopting the following marketing objectives for outreach:

- Create awareness of Lifeline/Link-up programs with public service agencies and other organizations that reach targeted individuals – especially those without phone service.
- Educate consumers on how to subscribe to Lifeline/Link-up programs.
- Promote the Lifeline program among diverse communities throughout the state, especially in Spanish-speaking communities.

Such objectives can be incorporated into the Commission's rules in order to provide guidance without directing specific actions. Such objectives provide the degree of flexibility that the FCC desired in the *Twelfth Report and Order.*[56]

The Commission also seeks comment on whether to "require ETCs to print and distribute posters, flyers, or other print media advertising Lifeline/Link-Up."[57] Not only should ETCs be required to print the above referenced items, ETCs should also be required to print and distribute bills inserts, post cards, and personalized letters.

One report found that direct contact with individual eligible consumers would provide benefits to non-telephone households.[58] For example, in Wisconsin, information on lifeline is sent directly to eligible consumers. In Maine, personalized letters and flyers were sent to every

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[56] "We recognize that a method that is reasonably designed to reach qualifying low-income subscribers in one location may not be effective in reaching qualifying low-income subscribers in another location." *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45. Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking (rel. June 30, 2000) ("*Twelfth Report and Order*").

[57] *NPRM* ¶58.

[58] *See* "Closing the Gap: Universal Service for Low-Income Households," Telecommunications Industries Analysis Project, (Aug. 1, 2000) at 19 and 28.

person known to be eligible for lifeline services. Recipients of the letters were determined using databases of various state and local aid agencies that administer the programs that determine eligibility for lifeline services. This effort increased the participation rate for Maine's Lifeline services by 14%.[59] Bill inserts and bill page messages are another effective way to reach eligible consumers. Several of Ohio's ETCs reported small increases in the number of enrolled customers after publication of a bill insert or message.

While direct contact with eligible consumers is the preferred method of outreach, NASUCA acknowledges that there are other equally effective techniques to reach eligible consumers. NASUCA recommends that ETCs create materials such as posters, flyers, and pamphlets that can be left behind with groups and agencies that service low income consumers. These materials must be self-explanatory and provide enough instruction so consumers can enroll in a Lifeline/Link-Up program without the assistance of a consumer group representative. Verizon successfully promoted Lifeline/Link-Up through the use of door hangers left behind by Boy Scouts and outreach agencies. Cincinnati Bell contracted with the Cincinnati Metropolitan Transit Authority to place Lifeline posters on targeted buses. Cincinnati Bell reported an increase in enrollment during this campaign.[60]

NASUCA also recommends that ETCs be required to develop "outreach materials and methods designed to reach households that do not currently have telephone service."[61] As stated

[59] *Id.*

[60] In its comments on the Joint Board Recommended Decision, BellSouth patted itself on the back for the "innovative program" created by the Coalition for Affordable Local and Long-distance service ("CALLS"). BellSouth Comments (Aug. 18, 2003) at 8. The merits or demerits of CALLS aside, the focus of the program on a brochure available through the Federal Consumer Information Center, and on the development of a website (*id.* at 9) obscures the fact that these are hardly the most direct ways of reaching consumers, especially low-income consumers.

[61] Joint Board Recommended Decision ¶ 51.

in the Joint Board recommendation, income-eligible consumers without telephones will not learn about lifeline programs from the telephone book,[62] nor will they be automatically enrolled in a Lifeline program. Groups and agencies that serve low-income consumers have the best chance to find and educate these consumers.

Consumers having a phone, being eligible for lifeline, yet not receiving lifeline benefits because of language barriers is yet another problem. For this reason ETCs should develop outreach advertising that can be read or accessed by non-English speaking populations within a carrier's service area. In response to the Commissions request for a benchmark percentage, NASUCA recommends that ETCs develop non-English documents when 10% or more of the low-income population speaks a language other than English. Appendix E of the Recommended Decision (at II.A.) describes multilingual outreach in a number of states, including California, where applications are available in Spanish, Korean, Laotian, Cambodian, Vietnamese, Tagalog and Hmong in addition to English. Having realized long ago that language barriers prevent eligible consumers from signing up for lifeline, several Ohio outreach organizations have created pamphlets, posters and flyers in Spanish, Vietnamese, Somalia and Chinese to reach consumers from those communities. All of Ohio's Consumer Advisory Boards produce their marketing materials in Spanish as well as English.

ETCs may have limited marketing budgets; however Lifeline/Link-up programs can be promoted using cost-effective methods in order to get the most out of a marketing budget. The burden should be on ETCs to show that a particular medium is not appropriate; an ETC electing not to use one of the above media should submit a plan that includes alternative outreach methods.

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[62] *Id.* ¶ 52.

Additionally, NASUCA recommends the Commission adopt policies to encourage the use of Consumer Advisory Boards ("CABs") to assist in the coordination of all of the aforementioned marketing efforts. For example, an effective CAB that consists of members from the state commission staff, the state advocate's staff, company staff and consumer groups representing low income constituents plays an active and vital role in the success of the Lifeline programs. Meetings are held quarterly either in person or via conference call. Without the CABs Ohio's lifeline programs in Ohio would not have thrived or grown to any great extent.

In Ohio CABs examine the value of various marketing tools such as marketing source reports, newspaper advertisements, consumer outreach groups, pamphlets, flyers, posters, door hangers, radio advertisements and video presentations and evaluates the geographical locations in which to distribute them. SBC Ohio's CAB works closely with the Ohio Department of Aging and the Ohio Department of Development to reach low-income consumers. In fact, during the HEAP enrollment period, the company encourages its outreach organizations to include Lifeline materials during interview sessions. The CAB reviews enrollment reports to determine the success of the overall program, where budget allocations would be most effectively spent, and where more outreach is needed to promote greater enrollment. The CAB is the liaison between state agencies and other consumer groups to facilitate the inner workings of the program processes.

V. CONCLUSION

The Commission has already taken important steps to broaden Lifeline and Link-Up eligibility criteria to better assist low income consumers in subscribing to and retaining affordable local telephone service. The Commission should complete this process by replacing the interim income eligibility criteria of 135% of Federal Poverty Guidelines with the 150% of FPG measure. The Commission now has a record to support the following findings:

- Basic local telephone service is not substantially more affordable for households with incomes in the 135% to 150% of FPG range;
- A measurable, significant number of households in this income range do not have telephone service;
- Households in this income range include single, Social Security recipients age 62 and older and families of the working poor;
- Telephone service is important to the health, safety and economic well being of these populations;
- The 150% of Federal Poverty Guidelines income-based criterion will treat households qualifying for Lifeline and Link-Up based on income more equitably relative to consumers who may qualify based on program participation in LIHEAP or Food Stamps;
- The costs of adopting the 150% of FPG income criterion as estimated by Commission Staff may no longer be valid estimates in light of changed regulatory conditions;
- Even accepting that adoption of the higher income eligibility criterion will impose additional costs on the Universal Service Fund, the benefits to the assisted consumers and public at large outweigh the costs.

- Rules for the advertising of Lifeline and Link-Up are needed.

The Commission should adopt these recommendations of NASUCA.

Respectfully submitted,

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	WC Docket No. 03-109
Lifeline and Link-Up	)	
	)	

Appendix A

UNITED STATES OF AMERICA
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:	*	
	*	**Docket No. WC 03-109**
Lifeline and Link-Up	*	

<u>Affidavit of</u>:

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<u>On behalf of the</u>:

National Association of State Utility Consumer Advocates
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August 19, 2004

My name is Roger Colton. I am a principal in the firm Fisher, Sheehan & Colton, Public Finance and General Economics (FSC). My principal place of business is Belmont, Massachusetts. In my capacity at FSC, I provide technical assistance to local, state and federal agencies, to consumer groups, and to public utilities, on rate and customer service issues involving telephone, water/sewer, natural gas and electric utilities.

I have been asked by the National Association of State Utility Consumer Advocates (NASUCA) in this proceeding to address the appropriateness of setting the income-based eligibility standard for the federal telecommunications Lifeline program at 150% of the Federal Poverty Level (FPL). In April 2004, the Federal Communications Commission (FCC) set the eligibility standard at 135% of the FPL and asked for comments with respect to increasing that standard to 150%.

My comments will address the following issues:

- Whether households living with incomes at 150% of the Federal Poverty Level lack sufficient resources to obtain affordable telephone service without Lifeline telephone assistance;

- Whether households with incomes at 150% of the Federal Poverty Level have significantly more total net resources than do households with incomes at 135% of the FPL;

- Whether households with incomes between 135% and150% of the Federal Poverty Level lack telephone service in the home;

- Whether increasing Lifeline income eligibility guidelines to 150% of the Federal Poverty Level is necessary to ensure that households with equal incomes, but who live in different states, will have equal access to Lifeline whether or not they participate in the LIHEAP and/or Food Stamp programs.

- Whether increasing Lifeline income eligibility guidelines to 150% of the Federal Poverty Level is necessary to ensure that low-income households living in the same state have equal access to Lifeline whether or not they participate in categorical eligibility programs.

- Whether increasing Lifeline income eligibility guidelines to 150% of Poverty is necessary to avoid missing important vulnerable low-income constituencies.

- Whether the FCC should clarify, and modify if necessary, its definition of "income" to exclude LIHEAP, Food Stamps and other non-cash benefits.

SECTION 1:

Households with income at 150% of the Federal Poverty Level lack sufficient resources to obtain affordable local telephone service without Lifeline assistance.

An assessment of whether households with income at 150% of the Federal Poverty Level have sufficient resources to have affordable telephone service must first define what is meant by "affordable" service. In its May 7, 1997 order on Universal Service, the Federal Communications Commission (FCC) defined the concept of "affordability" to include both an "absolute" component ("to have enough or the means for") and a "relative" component ("to bear the cost of without serious detriment").[1] According to the FCC, "both the absolute and relative components must be considered in making the affordability determination required under the statute."

For telephone service to be *not* affordable, in other words, a household need not lack telephone service altogether (a failure of the absolute aspect) if to retain service would impose "serious detriment" on the household(the relative aspect). I accept this FCC definition of "affordability."

Given this FCC definition, extending Lifeline telephone benefits to households with income at or below 150% of the Federal Poverty Level will assist households that have insufficient resources to obtain affordable telephone service. Using the Family Resource Simulator developed by the National Center for Children in Poverty, at the Columbia

[1] In the Matter of Federal-State Joint Board on Universal Service, FCC Docket NO. 96-45, FCC 97-157 (May 7, 1997), at paragraphs 109, et seq.

University School of Public Health, I have tracked the resources and expenses for families of various sizes and composition:[2]

- Two-person family, consisting of one adult and one child (age 4);
- Three-person family, consisting of two adults and one child (age 4);
- Three-person family, consisting of one adult and two children (ages 4 and 12).

To test whether geographic location makes a difference in the results, either between states or within a state, I have developed data for one large community and one smaller community in each of three states. The areas for which I present data are identified in Table 1:

Table 1: Communities for Which Family Resource Simulations Developed

		Location	
State	Pennsylvania	Philadelphia	Reading
	Georgia	Atlanta	Columbus
	Connecticut	Hartford	Waterbury

The Family Resource Simulator tracks total household resources and expenses as income increases for the household. As total income increases, for example, earned income must become a larger proportion of total household resources since the amount of Food Stamps decreases. A 2-person family, for example, loses eligibility for public health insurance for parents when earned income reaches about $7,000. That household loses eligibility for Food Stamps with earned income of roughly $16,000. For Resources after Expenses (R/A/E) to remain constant, earned income must increase sufficiently to offset this loss of public assistance.

A comparison of total resources with total expenses, which allows a computation of Resources After Expenses (R/A/E), is presented in Table 2 for the six communities.[3]

[2] In the discussion that follows, unless otherwise specifically noted, a "family" and a "household" are not distinguished in a technical sense.

[3] These calculations are based on a number of user-provided inputs. The inputs included in this analysis include the following: in a two-parent family, the second parent works part-time. The first parent in each household (including one parent households) works fulltime. No household has assets that would disqualify it from receipt of any public benefit. Households receive Food Stamps, Children's Health Insurance, and the Earned Income Tax Credit, but not child cares subsidies, housing assistance, or Temporary Aid to Needy Families (TANF). Households use the least expensive available child care type. Households do not have access to employer-provided health insurance.

Table 2: Resources* After Expenses (R/A/E): 150% Federal Poverty Level**
Six Communities (August 2004)

Community	One Adult/One Child			One Adult/Two Children			Two Adults/One Child		
	Resources	Expenses	R/A/E	Resources	Expenses	R/A/E	Resources	Expenses	R/A/E
Philadelphia (PA)	$17,173	$28,271	($11,098)	$22,457	$35,940	($13,482)	$21,173	$31,811	($10,638)
Reading (PA)	$17,803	$23,077	($5,274)	$23,262	$29,393	($6,131)	$21,978	$26,136	($4,158)
Hartford (CT)	$19,013	$23,981	($4,968)	$23,354	$29,103	($5,749)	$22,391	$24,206	($1,815)
Waterbury (CT)	$19,013	$24,374	($5,361)	$23,354	$29,497	($6,143)	$22,391	$24,572	($2,180)
Atlanta (GA)	$18,157	$23,538	($7,201)	$23,032	$29,663	($6,631)	$22,030	$29369	($7,339)
Columbus (GA)	$18,157	$19,453	($1,296)	$23,032	$23,758	($725)	$22,030	$23,229	($1,199)

*Resources include post-tax earnings, plus the Earned Income Tax Credit, plus public benefits (e.g., TANF, Food Stamps, Child Care Credit, housing subsidy, health insurance subsidy).
**Poverty Level calculated on pre-tax earnings. 150% of Federal Poverty Level for a household of two persons ($18,180) has been rounded to $18,000 for this analysis. 150% of Federal Poverty Level for a household of three persons ($22,890) has been rounded to $23,000.

As can be seen in Table 2, out of the 18 potential scenarios, a Lifeline program would deliver affordability benefits to households up to 150% of the Federal Poverty Level in all 18 instances. In all 18 scenarios for which data is presented, households with annual income at or below 150% of the FPL[4] have *negative* resources after taking into account basic household expenses.[5]

I conclude that local telephone service is not affordable to households with income at or below 150% of the Federal Poverty Level. Even if these households do not go without telephone service altogether, these households have *in*sufficient resources to maintain telephone service without substantial detriment to household finances. For these

[4] Non-cash benefits (such as Food Stamps), of course, do not count as "income" toward a determination of income as a percentage of the Federal Poverty Level.
[5] The family expenses are calculated using several key inputs provided within the Resource Simulator. The cost of a private non-group plan is calculated assuming a $500 deductible, 20% coinsurance, and $20-$25 co-payments. Quotes for such insurance are those collected by Columbia University. Note that estimates include the cost of insurance premiums only, not co-payments or other out-of-pocket expenses. Housing expense estimates are based on the Fair Market Rent (FMR; includes cost of rent and utilities) determined by the U.S. Department of Housing & Urban Development. The Simulator assumes a 2-bedroom unit for families with 1 or 2 children. Food estimates are based on the Low Cost Food Plan developed by the U.S. Department of Agriculture. Transportation cost estimates vary by the family's place of residence. In most cases, the Simulator assumes that parents commute to work by car, and the cost is estimated based on the Basic Family Budget methodology developed by the Economic Policy Institute (EPI). The "other necessities" portion of the family budget relies on data from the Consumer Expenditure Survey on the share of a family's budget they spend on items such as telephone, apparel, personal items, and other necessities. Annual costs for other necessities equals 31% of both annual housing costs and annual food costs combined. EPI, which developed the methodology, provides the following example using Baltimore (MD): For a one-parent, two-child family in Baltimore in 1999, housing costs are $7,536 a year and food costs are $4,200 a year. Thus, other necessities costs are: ($7,536 + $4,200) * 0.31 = $3,638.

households to have telephone service, they would be required to give up some basic household necessity.

SECTION 2:
Households with income at 150% of the Federal Poverty Level often have minimal additional total net resources as compared to households with income at 135% of the Federal Poverty Level.

Increasing gross household income from 135% to 150% of the Federal Poverty Level generally yields very little increase in net resources to a household. Net resources take into account several factors. For example, using Atlanta as an illustration, as earned income increases from $21,000 to $23,000 for a three-person household (with two parents and one child):[6]

- The amount of public assistance that that household receives will decrease, due to an offsetting $320 loss in the Earned Income Tax Credit in Georgia.
- The amount that household must spend on employment-related expenses increases, including an additional $490 for child care expenses for our Atlanta household.
- The proportion of income devoted to state and federal taxes increases, including an offsetting expense of $270 for our Atlanta household.

Table 3 indicates that this impact is not unique to Georgia. Using a 3-person household as an illustration, the roughly $2,000 gain in income recognized by a household moving from 135% to 150% of the Federal Poverty Level yields a gain in net resources of only a few hundred dollars in both Connecticut and Georgia. Indeed, as Table 3 demonstrates, the 3-person Philadelphia household in our example actually ends up being *worse off* from the perspective of net resources to meet basic household expenses because of its move from 135% to 150% of the Federal Poverty Level. The 3-person Reading (PA) household is neither better nor worse off because of its increased income. For the other four communities, each dollar of increased income yields between $0.20 and $0.35 of total net household resources.

[6] This is roughly equivalent to an increase from 135% to 150% of the Federal Poverty Level ($20,601 to $22,890).